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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

NICK BOULAHANIS and DONALD SCALISE,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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QUESTIONS PRESENTED

1. Whether the Confrontation Clause of the Sixth Amendment and Rule 804 of the Federal Rules of Evidence permit the admission into evidence of a court reporter's transcript of the Grand Jury testimony of a putative Government witness who was present at the trial but simply refused to testify because of his unarticulated and unspecified fears for which the Defendants were not responsible?

2. Was federal jurisdiction under the Hobbs Act, 18 U. S. C. § 1951, sufficiently established according to the Government's Depletion of Assets theory and the Seventh Circuit's distinction based upon the nature of the victim?

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Petitioners, by their attorneys, petition for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit affirming their convictions upon Count One of the indictment in the instant case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit in this case is reported as *United States* v. *Boulahanis*, No. 81-1405, 677 F. 2d 586 (7th Cir. 1982). It is reproduced in the Appendix. No opinion was filed in the District Court.

JURISDICTION

The judgment of the Court of Appeals for the Seventh Circuit was entered on May 6, 1982. A timely petition for rehearing with the suggestion for rehearing *in banc* was denied on June 15, 1982. The order of denial is reproduced in the Appendix. This Court's jurisdiction is invoked under 28 U. S. C. § 1254(1).

CONSTITUTIONAL PROVISIONS, RULES AND STATUTES INVOLVED

Pursuant to Supreme Court Rule 21.1(f) the following constitutional provision, rule and statutes are set forth in the Appendix:

Title 18 United States Code § 2

Title 18 United States Code § 1951

United States Constitution, Sixth Amendment

Federal Rules of Evidence, Rule 804.

STATEMENT

Petitioners were charged in the District Court in a two count indictment with violations of 18 U. S. C. § 894 (extortionate credit) and 18 U. S. C. § 1951 (extortion). Under circumstances set forth in the opinion of the Court of Appeals, a severance of the case against the Co-Defendant Frank Renella was granted immediately prior to the trial of Petitioners. After trial by jury both Petitioners were convicted upon each of the two counts and sentenced to serve five years and seven years respectively in the custody of the Attorney General. On appeal to the Court of Appeals for the Seventh Circuit Petitioners' convictions on Count One, the Hobbs Act Count, were affirmed but those on Count Two were reversed, the Court holding that § 894 was not violated in the absence of an identifiable

extension of credit. Because the sentences imposed upon Petitioners could have been influenced by their convictions under both counts, the Court of Appeals remanded to the District Court for resentencing under Count One.

The evidence at the trial concerned the events of two days, June 12 and June 13, 1979. At that time Nick Valentzas was the proprietor of an enterprise called the Hellenic Social Club, a storefront operation in Chicago to which various male individuals, largely of Greek extraction, came to socialize and gamble. Valentzas made his living by charging his customers an hourly rate for participation in gambling activity at the club. On June 12, 1982, Petitioners, along with Renella, came to the club. The evidence indicated that Petitioner Scalise stood by the door while Renella, along with Petitioner Boulahanis, accosted Valentzas. An altercation ensued culminating when Renella, in anger and in the presence of some twenty-five patrons of the club, proceeded to break up furniture and generally disrupt activities. T. 522-527.

On the following evening, Petitioners Boulahanis and Scalise[1] again visited Valentzas at the club. Prior to their visit Valentzas had complained to the FBI as a result of the previous night's altercation. Two agents were present at the club on June 13, 1982, and Valentzas was equipped with a tape recorder. The conversation between Petitioners and Valentzas in the alley behind the club was recorded and the transcript admitted into evidence. T. 758-762, 824. The content of that conversation was not overhead by either agent but they corroborated the fact of a conversation. One agent testified that Valentzas had $300 of his own money on his person at the time of Petitioners' visit, the serial numbers of which he had recorded, but there was no search of Valentzas conducted after Petitioners left and, accordingly, no evidence of payment.

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[1] Although the Opinion of the Court of Appeals indicates to the contrary the evidence was clearly that the Co-Defendant Renella was not present on the 13th.

The gist of the extortion offense under the Hobbs Act was proved by the contents of the tape recording in which Valentzas eventually agreed to pay $300 for the month immediately past and $500 on the eighth of each subsequent month in return for which Petitioners would pemit him to conduct gambling activities in the club. They would not shut it down or terrorize the premises and they would not permit anyone else to extort payments from Valentzas.[2]

During the presentation of its case-in-chief the Government called one James Chiampas as a witness. Chiampas apparently was present as a patron of the club on both June 12 and June 13, 1979. He appeared in court with counsel but he simply refused to testify. Making no claim of Fifth Amendment privilege Chiampas' refusal was predicated simply upon that individual's fear for his own safety. The District Judge ordered him to testify but he still refused. No order of contempt was entered although the District Court did explain to Chiampas that his refusal to testify was totally unjustified in the law, and that he could go to jail as a result thereof. The District Court then made a foundation finding of unavailability and permitted the Government to produce Chiampas' Grand Jury testimony before the jury over defense objections predicated upon the Confrontation Clause of the Sixth Amendment and Rule 804 of the Federal Rules of Evidence. T. 722-732.

The Grand Jury testimony of Chiampas, as read to the trial jury, was damaging to Petitioners. The Government did not claim to the contrary below. Chiampas, during his Grand Jury testimony, not only told the Grand Jury in detail about what occurred at the gambling parlor but, in addition, he identified photographs of the Petitioners.

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[2] Valentzas was killed prior to the trial and, accordingly, did not testify. There was no suggestion that Petitioners and Co-Defendant Renella or individuals connected with any of them were responsible for his death.

It was a rather realistic mystery why Chiampas declined to testify at the trial. He claimed he was afraid but he did not accuse anyone of threatening him nor did he articulate any threats to his family. Indeed, Chiampas eschewed in particular any suggestion that anyone, specifically any of the Defendants, threatened him at all. T. 644-652, 618. He, nonetheless, refused even to confirm or deny the truthfulness of his earlier Grand Jury testimony. T. 646-651. The prosecution, it appeared, was prepared to offer Chiampas immunity but he never claimed Fifth Amendment privilege, simply and steadfastly refusing to testify. T. 466-654.

After the voir dire hearing, absent the jury, the Trial Court dismissed Chiampas from the courtroom without entering an order remanding Chiampas into custody. The Trial Court, while banishing Chiampas from the courtroom stated:

> "If you think that you are going to get away with this completely, you are mistaken, and someone ought to tell you that. *If it weren't for the fact that I don't think the matter is worth bothering with,* I would order you imprisoned for contempt of Court. Now you are excused." T. 660-661 [emphasis added].

Chiampas was alive and well and capable of testifying. His refusal was based solely on his announced but unarticulated and unspecified fear. The Trial Court entered no contempt order instead permitting the entirety of the Chiampas Grand Jury testimony to be read to the trial jury. That testimony is reproduced in the Appendix.

At the Hellenic Social Club Valentzas maintained a coffee pot and served coffee, both Greek and American varieties, to his patrons. A cup was provided in which patrons could contribute money to defray the cost of the coffee. However, no price was set nor was the contribution mandatory. T. 515-516. There was a good deal of evidence at the trial in support of the Government's theory of federal jurisdiction concerning the

origins of the coffee, none of which was grown in the State of Illinois, and the commercial distribution system by which coffee reached the Hellenic Social Club. The evidence demonstrated that the coffee sold at or about the time of trial for approximately $5.00 a can and that the Hellenic Social Club consumed about $68.00 worth each month. It was the Government's Hobbs Act jurisdictional theory that the extortion of money from Valentzas revealed by the tape recording of his conversation with Petitioners depleted his assets and as a result thereof he had less money available to spend upon coffee, an item of interstate commerce.

REASONS FOR GRANTING THE WRIT

A. THE CONFRONTATION ISSUE

This case presents important and recurring questions concerning the application of the Confrontation Clause to cases in which Grand Jury testimony is substituted for the live testimony of the declarant in front of the court and jury. This issue has produced inconsistent adjudications among the Courts of Appeals. Accordingly, Petitioners submit, review by this Court is now appropriate.

The decision below, we submit, is the only reported decision in which any federal court of review has allowed the substitution of Grand Jury testimony instead of the testimony of the live witness where the record contains no allegations that the witness was the subject of threats by the defendants on trial or by persons on their behalf. The Seventh Circuit stands alone. No other court of appeals has allowed such a startling violation of either the Confrontation Clause or Rule 804, Federal Rules of Evidence.

In *United States* v. *Garner*, 574 F. 2d 1141 (4th Cir., 1978), the Court affirmed a series of drug convictions finding that the use of the witness Robinson's Grand Jury testimony was permissible in that Robinson did offer testimony before the

trial jury *albeit* the testimony was arguably false. The false trial testimony may have been the result of Robinson being threatened by the defendants or by persons in prison. Since he appeared before the Trial Court there was an opportunity—at least of sorts—for the defense to cross-examine. The Court found that Robinson's earlier Grand Jury testimony was reliable for any number of reasons and thus the admission of that Grand Jury testimony did not violate the Confrontation Clause.

The *Garner* Court also made reference to *United States* v. *West*, 574 F. 2d 1131 (4th Cir., 1978), where another drug conviction was affirmed and Grand Jury testimony was made available to the trial jury. In *West*, the declarant (Brown) was murdered prior to trial and the Government was fairly able to demonstrate that the trial defendants, including West, had some complicity in Brown's murder. 574 F. 2d at 1133-1138.

In both *Garner* and *West* the Court discussed the application of Rule 804(b)(5) and in each case the Court determined that the Grand Jury testimony offered by the Government in each case qualified for admission under that rule. In both *Garner* and *West*, Judge Widener dissented.

Mr. Justice Stewart, joined by Mr. Justice Marshall, dissented from the denial of certiorari in *Garner*, reported *sub nom. McKethan* v. *United States*, 439 U. S. 936 (1978). Concerning reliability and Grand Jury testimony, his opinion offered the following:

> "That the evidence was first given before a grand jury adds little to its reliability. In grand jury proceedings, the ordinary rules of evidence do not apply. Leading questions and multiple hearsay are permitted and common. Grand jury investigations are not adversary proceedings. No one is present to cross-examine the witnesses, to give the defendant's version of the story, or to expose weaknesses in the witnesses' testimony." 439 U. S. at 938, 99 S. Ct. at 335.

Additionally, Justice Stewart pointed out [in 1978] that at that time there was a split in the circuits regarding the admissibility of Grand Jury testimony. 439 U. S. at 939, 99 S. Ct. 335.

Prior to *West* and *Garner* the Court of Appeals for the Fifth Circuit had found Grand Jury testimony inadmissible in *United States* v. *Gonzalez*, 559 F. 2d 1271 (5th Cir., 1977). Prior to the adoption of the Federal Rules of Evidence, the Second Circuit ruled in *United States* v. *Fiore*, 443 F. 2d 112 (1971), that the admission of Grand Jury testimony violated both the Sixth Amendment and the Hearsay Rule.

In *United States* v. *Carlson*, 547 F. 2d 1346 (8th Cir., 1976) the Court affirmed a series of drug convictions finding that the introduction of prior Grand Jury testimony was not violative of either the Federal Rules of Evidence nor the Confrontation Clause. Prior to the admission of the Grand Jury testimony, the declarant stated that he had always been truthful with the Government and the Grand Jury. 547 F. 2d at 1353. Again, prior to the admission of the declarant's Grand Jury testimony, he was held in contempt of court and held for six months in custody. In addition, there was probative evidence before the Trial Court that Carlson (one of the trial defendants) had threatened the witness. Under those circumstances the Court of Appeals affirmed the conviction and found that Carlson had *waived* his right to confrontation by his conduct toward the declarant. 547 F. 2d at 1358-1360.

After 1978, both the Fifth and Tenth Circuits have considered similar questions. In *United States* v. *Balano*, 618 F. 2d 624 (10th Cir., 1980), the Court affirmed a conviction under 18 U. S. C. § 2314 finding that the admission of Grand Jury testimony of the non-appearing declarant was not prejudicial and not a violation of the Confrontation Clause in that the defendant himself had been responsible for generating the "fear" in that witness. The *Balano* Court found a *waiver* of the right of confrontation and thus aligned itself with the Eighth

Circuit in *United States* v. *Carlson*, 618 F. 2d at 628-630. Neither *Balano* nor *Carlson* intimidated that the Grand Jury testimony would have been admitted had it not been for the clear evidence that the defendants in those cases caused the declarant not to testify.[3]

In *United States* v. *Thevis*, 665 F. 2d 616 (5th Cir., 1982) the Court affirmed a series of convictions finding that the use of potential witness Underhill's Grand Jury testimony was permissible in the circumstances of that case. In *Thevis* the Government offered extensive evidence that Thevis and others conspired to murder Underhill and, of course, Underhill's pretrial murder precluded his testifying as a Government witness against Thevis. Only under those circumstances did the Court approve the use of Underhill's Grand Jury testimony. The *Thevis* Court reviewed Rule 804, the Confrontation Clause and the Hearsay Rule in an effort to measure the proper dimension of admissibility *vel non*. Ultimately, the *Thevis* Court found no error in the admission of the Grand Jury testimony because of the *waiver* principle. Simply, the *Thevis* Court found that the defendant, having been responsible for the absence of the declarant, *waived* the constitutional and procedural protections that otherwise would have applied where the Government was attempting to utilize prior Grand Jury testimony as substantive evidence against him. The *Thevis* Court cited both *Balano* and *Carlson* with approval—665 F. 2d at 627, 628, 632. It should be noted, however, that the *Thevis* Court limited the admission of Grand Jury testimony to the circumstances of the case. Indeed, the *Thevis* Court specifically

[3] Both *Carlson* and *Balano* contain extensive reviews of the application of Rule 804 and the Confrontation Clause to the admission of Grand Jury testimony as substantive evidence in situations where the declarant does not offer trial testimony. We shall not review same within the parameters of this petition. Rather, we shall provide an extensive review of same in our brief on the merits in the event certiorari is granted.

noted that its decision "... does not permit wholesale admission of hearsay evidence when a witness is unavailable." 665 F. 2d at 633, n. 17.

This Court has repeatedly noted the importance of confrontation rights in testing the reliability of evidence. The more recent Confrontation Clause cases describe the role of confrontation, and the attendant opportunity to cross-examine, in testing accuracy as so important "... that the absence of confrontation at trial calls into question the ultimate integrity of the fact-finding process." *Ohio* v. *Roberts*, 448 U. S. 56, 64, 100 S. Ct. 2531, 2538 (1980), quoting *Chambers* v. *Mississippi*, 410 U. S. 284, 295, 93 S. Ct. 1038, 1046 (1973). This Court has stated, "[A] primary interest secured by [the Confrontation Clause] is the right to cross-examination." *Ohio* v. *Roberts*, 448 U. S. at 63, 100 S. Ct. at 2537, quoting *Douglas* v. *Alabama*, 380 U. S. 415, 418, 85 S. Ct. 1074, 1076 (1965). In *Chambers* the Court stated:

> "The right of cross-examination is more than a desirable rule of trial procedure. It is implicit in the constitutional right of confrontation and helps assume the 'accuracy of the truth-determining process.' *Dutton* v. *Evans*, 400 U.S. 74, 89, 91 S.Ct. 210, 220, 27 L.Ed.2d 213 (1970); *Bruton* v. *United States*, 391 U.S. 123, 135-137, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968). It is, indeed, 'an essential and fundamental requirement for the kind of fair trial which is this country's constitutional goal.' *Pointer* v. *Texas*, 380 U.S. 400, 405, 85 S.Ct. 1065, 1068, 13 L.Ed.2d 923 (1965)." 410 U. S. at 295, 93 S. Ct. at 1046.

This case presents an opportunity not only for further definitive explanation of the Sixth Amendment, but also for the authoritative construction of Rule 804 of the Federal Rules of Evidence. While it is certainly clear that no rule can permit what the Constitution prevents, we ask this Court to review in addition whether Rule 804 can fairly be read to justify the admissibility of Chiampas' Grand Jury testimony.

Rule 804(b)(5) appears, in the scheme of the draftsmanship of the Rule, to constitute a final catch-all subsection which, by the application of the usual rules of statutory construction including that *ejusdem generis*, applies to govern admissibility in instances similar but not identical to the enumerated instances of the preceding subsections. It would appear that subsection 5 was meant to provide criteria for the admissibility of hearsay statements not covered in the first four subsections. But subsection 1, headed "Former Testimony," purports to set forth the criteria applicable to the determination of the admissibility of the former testimony of an unavailable witness. The admissibility of Grand Jury testimony, one would expect, would be judged under subsection 1. It is clear, however, that Grand Jury testimony could never qualify for admission under subsection 1 since the Grand Jury provides no opportunity for cross-examination nor any motive to fully develop the testimony as required by that subsection. Hence, the Government attempts to justify its admission under subsection 5.

We suggest that there is a necessary negative implication in Rule 804(b)(1). As a matter of statutory construction former testimony which does not qualify for admissibility under that rule is inadmissible. There is nothing in the draftsmanship of the rule to suggest that former testimony, not qualifying under subsection 1, should be judged a second time under subsection 5. Subsection 5, we suggest, is available to provide criteria for judgment in connection with hearsay exceptions which are like, but not identical to, those codified in the first four subsections. Such a view of the rule eliminates the need for constitutional adjudication as well as for the application of the standards of subsection 5.

Assuming, *arguendo*, that the admissibility of the Chiampas' Grand Jury testimony is to be judged under subsection 5, that subsection permits admission of the evidence only if its reliability equals or exceeds that of the other exceptions in Rule 804(b). Cf., *United States* v. *Thevis*, 665 F. 2d 616, 629.

There has been no definitive review of Rule 804 in this Court. Even on this subject, however, the decisions below are not in accord. Both *West* and *Carlson* seem to conclude that corroborated Grand Jury testimony meets the reliability standard of Rule 804(b)(5); however, *Thevis* puts the matter in grave doubt as does the language of *United States* v. *Garner*, 574 F. 2d 1141 at 1144, 1146. In the case at bar the Court below found the Chiampas Grand Jury testimony admissible on the authority of *Carlson* and *West* but on what appears to be hearsay grounds not based upon the reliability concept of Rule 804(b)(5). Appendix, at 5a-6a.

The doubts of the *Thevis* Court whether Grand Jury testimony *would ever reach* the level of Rule 804(b)(5) reliability, 665 F. 2d at 629 (5th Cir. 1982), conflict with the action of the Court below in allowing the admission of the Grand Jury testimony absent any realistic review of 804(b)(5). Appendix, at 6a. The Courts of Appeals in *West* and *Carlson* found sufficient reliability to allow the admission of the Grand Jury testimony under 804(b)(5) in that the Grand Jury testimony had some indicia of reliability because in each instance there was corroboration supporting the reliability of the Grand Jury transcripts. In *Thevis*, *West* and *Carlson*, as well as *Balano* and *Garner*, however, the Grand Jury transcripts became admissible because the declarant was unavailable as a result of conduct directed toward the declarant by the defendants in those cases. In our case, there simply is no evidence *at all* to support the *waiver* theory that was the actual ground of decision admitting the Grand Jury testimony in each of those cases.

The Second Circuit in *United States* v. *Flore*, 443 F. 2d 112 (2nd Cir., 1971), declined to admit similar Grand Jury testimony; the Fourth Circuit in both *United States* v. *West*, 574 F. 2d 1131 and *United States* v. *Garner*, 574 F. 2d 1141 (dissent noted in each decision) admitted the Grand Jury testimony on a *waiver* theory in that the conduct of the defendants in both

cases caused the declarant to be unavailable (1978); the Fifth Circuit in *United States* v. *Gonzalez*, 559 F. 2d 1271 (5th Cir., 1977) declined to allow Grand Jury testimony to be admitted, but in *United States* v. *Thevis*, 665 F. 2d 616 the same circuit allowed the admission of the Grand Jury testimony where the defendant was responsible for the murder of the declarant (1982); the Seventh Circuit in this case, *United States* v. *Boulahanis*, 677 F. 2d 586, admitted the Grand Jury testimony of a witness who simply refused to testify where there was no evidence that the defendants or any one acting on their behalf threatened or tampered with the witness. The Eighth Circuit in *United States* v. *Carlson*, 547 F. 2d 1346, admitted the Grand Jury testimony in light of the evidence available that the defendant in that case tampered with or threatened the declarant (1976). The Tenth Circuit in *United States* v. *Balano*, 618 F. 2d 624 admitted the Grand Jury testimony of the non-appearing declarant because the defendant caused the declarant to be unavailable (1980).

In each of the decisions admitting Grand Jury testimony in federal criminal cases, the *only* theory supporting admission was a *waiver* principle. The conduct of those defendants caused the declarant to be unavailable. The Seventh Circuit, in this case, stands utterly *alone*.

This Court has not addressed the question whether the Confrontation Clause or Rule 804(b)(5) permits the Government to proffer Grand Jury testimony as evidence in the absence of the declarant. This case provides an appropriate vehicle for the review and determination of this exceptionally important question in the area of federal criminal litigation. The problem recurs. No authoritative resolution has been found. The circuits are hardly in accord. Under such circumstances, we respectfully submit, the granting of the writ is appropriate.

B. JURISDICTION UNDER THE HOBBS ACT

In the Court of Appeals, Petitioners challenged the application of the Government's depletion of assets theory to the facts of this case in order to convert what appeared to be an entirely usual violation of a state extortion statute into a Hobbs Act prosecution. On the face of it, extortion from the proprietor of an entirely local card room seems well outside the range of cases the Hobbs Act was intended to reach. Petitioners argued that nothing revealed in the facts of this case indicated the presence of any problem of national concern or scope. The extension of Hobbs Act jurisdiction to the case of local card players, we suggested, entirely exceeded any jurisdictional limitations upon federal law enforcement in robbery and extortion cases. In short, the depletion of assets theory as applied to the purchase of coffee converted the Hobbs Act into a general extortion and robbery statute virtually indistinguishable from those enforced in the several states.

Petitioners relied upon the Seventh Circuit decision in *United States* v. *Mattson*, 671 F. 2d 1020 (7th Cir., 1982), in which the Court rejected the Government's attempt to apply the Hobbs Act to payments made to a local examiner with authority to license electricians in the City of Chicago. The opinion in the instant case attempts to reconcile affirmance here with reversal there on the theory that the money in *Mattson* was extorted from an individual whereas the victim in the instant case was a business enterprise. We suggest that in a recurring matter of such importance to the administration of the Hobbs Act such a distinction simply will not do.

The opinion below indicates intellectual dissatisfaction with this distinction but adopts it nonetheless because it has some "pragmatic justification" and draws an easily discernible line separating those cases falling within the ambit of the Act from those without. The distinction relied upon cannot be justified either intellectually or pragmatically. Nothing having to do with the purpose of the Act to protect interstate commerce

depends to the slightest degree upon whether the victim is an individual as opposed to a corporation, partnership, or some other form of enterprise. Reliance upon such a distinction does not even share the attractiveness of a bright line rule in that its somewhat arbitrary nature may be justified by ease of application. It is not easy to apply. The instant case, on its facts involving a gambler running a card room, demonstrates that beyond peradventure. Specifically, in a case in which there was no proof of any payment at all, the determination whether the money was to come from Velentzas individually, Valentzas as gambler, Velentzas as proprietor, or Velentzas as representative of the Hellenic Social Club, is next to impossible.

The policy considerations supporting the limitation of Hobbs Act jurisdiction to those cases demonstrating a realistic probability of some adverse consequences to the channels, facilities or instrumentalities of interstate commerce are almost too plain to require enumeration. With due regard to an ever increasing federal influence upon the lives of the citizenry and the ever decreasing number of transactions occurring in the country which have purely local ramifications, a sound federalism requires the exercise of some discretion in the application of criminal statutes predicated upon the Commerce Clause. Practical considerations militate with equal vigor to the same conclusion. While modern methods of travel, communication and transportation have certainly increased the difficulties involved in the detection and prosecution of crime by local authorities, there remains a sphere in which the authority of those local agencies ought to be respected. The constitutional scheme is still one of plenary state sovereignty coupled with delegated and limited national power. This is a case in which that line has been overstepped.

The Hobbs Act, in addition to extortion, proscribes affecting interstate commerce by robbery. Indulging the Government's depletion and coffee theories, it is clear that strongarm

robberies of the sort dealt with in huge numbers day after day in the criminal courts in every state constitute Hobbs Act violations. No such result was intended by Congress, nor should it be countenanced by this Court. When a need exists—when the protection of a real national interest is involved—when issues are presented that are national in scope—then jurisdiction under the commerce clause ought to be vindicated. Here, there is no practical need, no national interest nor any issue of national importance presented.

The purpose of the Congress in enacting the Hobbs Act was to protect the instrumentalities of interstate commerce against injury from extortion. *United States* v. *Green*, 350 U. S. 415 (1956). Its application in this case outruns that purpose. The holding of the Court below gives currency to a distinction having little to do with the constitutional objectives of the Commerce Clause or with the legislative objectives of the Hobbs Act. Every aspect of the application of the Government's theory of commerce to affirm the convictions of Petitioners is artificial. We respectfully suggest that it is important that some limitation be placed upon the artificiality of the jurisdictional element of federal crimes. Because of the importance of that issue to the administration of criminal justice in the federal courts we respectfully petition this Court to issue its Writ of Certiorari.

CONCLUSION

For the reasons discussed above, we respectfully submit that this Court ought to issue its Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit to review that Court's judgment in the instant case.

Respectfully submitted,

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